



**TOWN OF HARPSWELL
PLANNING BOARD MINUTES
September 16, 2009
ACCEPTED**

MEMBERS PRESENT

John Papacosma, Chair
Roberta Floccher, Vice Chair
Robin Brooks, Secretary
Dorothy Carrier
Joanne Rogers
Debora Levensailor, Associate
Burr Taylor, Associate

MEMBERS ABSENT

STAFF PRESENT

Carol Tukey, Town Planner
Melissa Moretti, Recording Secretary

The Town of Harpswell Planning Board meeting, being duly advertised in the Brunswick *Times Record*, was called to order at 6:34 PM by John Papacosma, Chair. Introductions were made of Board member and the Agenda was reviewed by the Chair. The Pledge of Allegiance was then recited.

The Chair mentioned there had been a site visit on Monday, September 14, 2009 that was attended by Mr. Brooks, Ms. Rogers, Ms. Carrier, the Chair, the Town Planner and Mr. Taylor.

NEW BUSINESS

09-09-01 Julie B. Zimmerman (Owner/Applicant), Subdivision Amendment, Tax Map 39 Lot 5, 52 Tote Road, Harpswell

Steven Zimmerman, Julie Zimmerman's husband, addressed the Board on her behalf. He explained that, "in the beginning," there was Gun Point Cove which had eight lots. He referred to the site plan the Board members had in their packets. He said that the entire subdivision "came with considerable protective covenants" with regard to the number of times a lot could be divided, and how many lots could be built on the water. Mr. Zimmerman said they had since sold about three acres on the back side of Lot 8; he also mentioned that the right-of-way had been changed. He explained that they had split off about three acres on the back side of Lot 8 that the road currently crossed, "all the way out to the mailboxes," and were currently owned by Adam S. Krea.

Mr. Zimmerman explained their proposal, and said that Mr. Krea wanted "protection" from anyone building near him (in the back); he referenced the site visit and stated that the lot was "kind of in two parts;" Mr. Krea wanted to buy most of the rest of the back of Lot 8 which would "extinguish" the right-of-way going through Lot 8, but would retain the right-of-way going through Lot 7. He explained that they would end up with 12 acres (as before), but it would be split 6 ½ acres on the water and 5 ½ acres on the back. It would still be just one lot and, under the covenants, the lot could also be divided once more on the water side.

He asked the Board if they had any questions, and also stated that the "pins were in." The Chair asked for comments from the audience; there were none. Mr. Zimmerman also stated that, when the property was conveyed, it would be conveyed with the covenants pertinent to Gun Point Cove properties.

The Chair stated that it was a "simple division of an existing, approved subdivision;" therefore, it was not necessary for the Board to "plow through" the ordinance with regard to the potential impacts a subdivision might incur.

Ms. Rogers made a motion to approve the waiver of the following sections of the ordinance: 8.3.2.5 Topography, 8.3.2.11 Soil Survey, 8.3.2.12 Sewage Disposal, 8.3.2.13 Water Supply, 8.3.2.14 Solid Waste,

8.3.2.15 Water Quantity, 8.3.2.16 Roads, 8.3.2.17 Vehicular Traffic, 8.3.2.18 Utilities, 8.3.2.19 100 Year Floodplain, 8.3.2.20 Surface Drainage Plan, 8.3.2.21 Description of Problems with Drainage, Soils, Topography, 8.3.2.22 Hydrogeologic Assessment, 8.3.2.23 Location of Historic, Archeological, Scenic, or other Critical Resources, 8.3.2.24 Comprehensive Plan, 8.3.2.25 Location of Significant Wildlife, 8.3.2.26 Location of Public or Private Parks, 8.3.2.27 Parks or Open Space, 8.3.2.28 Association, 8.3.2.29 Soil Erosion and Sedimentation Plan, 8.3.2.30 Fencing and Screening, 8.3.2.31 Construction Cost Estimates, 8.3.2.32 Offshore Islands, 8.3.2.33 Financial Capacity, 8.3.2.34 Approvals for Wastewater Discharge, MeDHS, and LPI, and 8.3.2.35 Any other information for Planning Board. The motion was seconded; the Chair asked if there was further discussion, and there was none. The motion passed unanimously. Ms. Rogers made the motion to approve the Gun Point Cove Subdivision Amendment with the standard conditions of approval; it was seconded. The Chair asked for further discussion; there was none. The Zimmerman's subdivision amendment was unanimously approved.

The Town Planner gave the Board the opportunity to sign the Mylar at the meeting after she confirmed it was the same one she had reviewed. The Board agreed to sign the copies of the Zimmerman's subdivision amendment at the meeting, and there was an unofficial break in the proceedings.

The Chair said the Board would consider the Minutes of last month next, and also change the order of the hearing of the Agenda items: the jurisdictional matters would be next and the blasting ordinance would be last.

CONSIDERATION OF MINUTES

The Chair asked for a motion to accept the Minutes of August 25, 2009 as printed. Ms. Carrier made the motion and it was seconded; the Minutes were accepted unanimously, as printed.

OTHER BOARD BUSINESS

Consideration of Planning Board exercise of jurisdiction over applications(s) pursuant to Site Plan Review Ordinance §16.4 and/or Shoreland Zoning Ordinance §10.3.2.3.

The Chair explained to the audience the purpose of the Planning Board's consideration of jurisdictional matters.

Vegetable Corner

Raymond Tetreault of Vegetable Corner addressed the Board. The Chair explained that there had been "some deviation from the original plan" that had been approved on April 16, 2009; he asked Mr. Tetreault to explain. Mr. Tetreault said the only deviation from the original plan had been the addition on the side where he had a walk-in refrigerator; he said they had added 5 ft. to the length, which was originally 8 ft. x 16 ft. He said his contractor had asked the Code Enforcement Officer, William Wells, if they could add 5 ft. to the length, which would make it 8 ft. x 21 ft. He said his contractor had received a permit to add on the 5 ft.

Mr. Tetreault referred the Board to the plan in their packets. The Chair asked the Town Planner her understanding of the change. She confirmed with Mr. Tetreault that the additional 5 ft. was to the side and was for a cooler. He said the old cooler was going to be picked up; also, the shed that had been there was gone. The Chair asked if there were questions from the audience; there were none. He asked if there were questions from the Board; there were none.

Ms. Tukey mentioned to the Board that there had been a call to Kristi Eiane, the Town Administrator, from a neighbor who had asked about the coolers being outside; Ms. Tukey had told her the coolers would be housed inside, per Mr. Tetreault. Mr. Tetreault explained to the Board that having the coolers outside was a temporary situation.

Ms. Tukey also mentioned the neighbor had a concern about lighting; there was a light on at night. Mr. Tetreault said they had a light on "out front" in the parking lot. She said it seemed to be shining in the neighbor's house. The Board and Mr. Tetreault concluded there was no house across the street from the store. Ms. Tukey stated that the identity of the complainant was "anonymous" to her. Mr. Tetreault stated that he left an outside light on every night. The Chair stated the Board did not know who or where the complaint had come from; Ms. Tukey said she was just relaying "what somebody told her."

Ms. Carrier confirmed that the total change was 5 ft. She then made a motion for the Board to reject jurisdiction; it was seconded. Ms. Floccher clarified that the Building Permit Application dated April 8, 2009 had already had the 22 ft. side length approved by the Code Enforcement Officer. There was some discussion among the Board members. The Chair asked if there were further questions; there were none. The Chair asked for a vote on the motion; the Board unanimously agreed to not take jurisdiction of the matter.

Orr's Island Methodist Church

The Chair explained that the Code Enforcement Office had received an application from the Church for an addition. Planning Office review had determined that the addition would qualify as a "minor site plan amendment" pursuant to §16.4 of the Site Plan Review Ordinance. As per the referenced section of the Ordinance, abutters within 500 ft. had been notified as of September 4, 2009.

Ms. Rogers addressed the Chair, and asked to abstain from voting on the matter. The Chair appointed Ms. Levensailor as a full voting member for the matter.

The Chair explained to the Board that they had to look at what was proposed, and then evaluate whether it would be a minor change. Ms. Carrier said she understood the Church was going to use the existing shed which was already attached, and would add a second floor for office space. Ms. Rogers, who was the Lay Leader for the Church, explained they were actually rebuilding the existing shed in the same size (the same footprint, with added height).

The Chair asked if there were further comments; there were none. Mr. Brooks made the motion that the Board not accept jurisdiction; it was seconded. The Chair asked if there was further discussion; there was none. The Board voted unanimously to not take jurisdiction.

Foreign Auto & Supply, Inc.

Chris Johnson of Foreign Auto & Supply, Inc. addressed the Board. He told the Board that his business was presently located at 33 Henry Creek Way, Doughty Point. He explained that their space was presently limited, and the property at Black Horse Yachts (which had gone out of business) would meet their needs; they wanted to move their business "from Point A to Point B."

Mr. Brooks asked where Black Horse Yachts was located; Mr. Johnson responded it was at 3 Farr Lane in Harpswell (down Hwy. 123 past the Post Office). He said there were two fairly new buildings (built around 2000) on the property, which was about ten acres. The Board confirmed they were large metal buildings. Mr. Johnson said the buildings were a total of 9,000 sq. ft., and then he described them.

Mr. Johnson explained his business to the Board; they restored Volkswagen buses and Vanagens, but did very little "maintenance," only for a very few local customers. He explained that all the painting and body work was done at Brunswick Ford; afterward, the vehicle would return to Foreign Auto for reassembly. He confirmed that the business would no longer operate at the original location. Mr. Johnson confirmed that there would be oil storage at the new location.

The Chair read from §3.1 of the Site Plan Review Ordinance. He said the Board should evaluate whether the use would be substantially changed, in view of the previous operations at the site, with regard to impact. There was discussion among the Board members regarding chemical usage, and the prior Planning Board approval process of Black Horse Yachts. The Town Planner explained that the conditions of the old business would not necessarily affect the new business; the Board should look at whether the level of intensity would change, i.e. more traffic, more outside storage, more employees, etc. There was further discussion among the Board members, and the Chair related what he could remember of the time Black Horse Yachts had gone before the Planning Board. He asked for further comments from the Board; there were none.

The Chair said the Board needed to decide if they wanted to have a “full blown site plan review” or would they concur that the Code Enforcement Office should deal with the application and approvals. The Town Planner clarified that the matter was not necessarily jurisdictional; it was just to see if the Board wanted it to come under site plan review.

Mr. Brooks moved that the Board “not conduct a full blown site plan review;” it was seconded. Ms. Carrier said she didn’t have an issue with the matter, but didn’t know what her decision would be based on. There was discussion regarding remand to the Code Enforcement Office with conditions.

Mr. Johnson offered the appraisal of the property to the Board, if they needed it for further understanding. He understood that the previous use of the property entailed rebuilding boats, fiberglassing and customizing. It was also confirmed that all his employees would be able to park on the premises. The Chair asked about the volume of traffic from suppliers, etc. Mr. Johnson said that UPS or FedEx usually came three times a week and he didn’t think that would change much. He also said “a few times a year there might be a semi that would drop off an engine,” but would be no problem. He explained the increase in employees, and also addressed the convenience of having the operation inside with relation to winter conditions.

The Chair asked for further comments; there were none. The Board voted unanimously in favor of remanding the matter to the Code Enforcement Office.

OLD BUSINESS

Blasting Ordinance Review

The Chair said there had been concerns throughout the process, primarily with regard to appropriate licensing, site preparations, notification, etc. He reiterated that there had been individuals who had addressed the Board to relate negative results they had experienced from blasting operations. He said that wells were affected, in those cases, either by contamination or with supply issues. The Chair mentioned that Mr. Taylor had done research on the Internet and had provided the Board with handouts. The Chair said he thought an “essential issue” was whether an abutter should incur costs as a consequence of an activity that involved blasting.

Mr. Taylor said that, since the last meeting, he had learned of more people who had been negatively affected by blasting. He referenced the previous testimony of the Code Enforcement Officer who had stated there were about 40 blasting events a year with, perhaps, a problem every month (which would translate as one out of three blasts that could result in a complaint). He referred the Board to his handout of a blasting ordinance from the Town of Edgecomb; he said that they required pre-assessment. Mr. Taylor said he thought “a key was Portland;” they required different fees [an example was attached], depending on how much material was to be removed.

Mr. Taylor suggested the Town’s website should have “a lot more information on it,” and referenced the Town of Shelton’s website as an example. He encouraged the Board to review all the materials he had provided, and summarized that he thought the most pertinent issues would be the website, required pre-assessment for

larger blasts, and more information. He said Ben Wallace, someone who did testing for the Portland Fire Department, had recommended Brian Skehan, who did pre-assessing. Mr. Taylor suggested that Mr. Skehan might be able to give the Board more information "about blasting and about the conception." He referenced testimonials from citizens who had stated that the system in Harpswell was "very fragile," but intimated that the information was actually unknown. He also explained that there were two kinds of rock in Harpswell, and said more information was needed.

The Chair asked the Board their opinion regarding harm to an abutter since the Board agreed on that point. Ms. Floccher said she thought that a blaster could "do everything right" and there could still be "some type of harm to somebody," even though the blaster had "not breached his duty in the way he carried out his actions." She referenced the ordinance from the Town of Edgecomb, Page 2, which gave a description of "strict liability;" she also referenced §7 "Indemnification," and §9 "Strict Liability." She said she was surprised that a town could be indemnified to that extent, and noticed the Portland ordinance did not have that. Ms. Floccher said there could be "some scale of blasting that would impose that," but she didn't think "normal" blasting would. She explained that it could not be certain "an abutter would escape all harm."

Mr. Taylor asked that, if there was harm, who would pay? Ms. Floccher said "for there to be a tort, there would have to be duty, breach, causation and harm." There was further discussion.

The Chair suggested the Board read the handout materials and have a workshop and, if possible, get in some expertise. Ms. Floccher suggested the Maine Municipal Association ("MMA") might have examples from other towns and/or other knowledge on the subject. Mr. Brooks suggested the experts they needed were geologists, a lawyer, a hydrogeologist (suggested by the Town Planner), and a blaster. There was discussion regarding measurement of a blast using a seismograph. The Chair suggested the Board look at the Portland ordinance, as Portland was a congested area with a variety of structures.

The Chair asked the Board what they would like to do next. The consensus was to schedule a workshop and include resources of information, i.e. experts. He also asked the Town Planner to contact the MMA to see if they had any information that would be useful, or if they could recommend some expertise. Ms. Levensailor said she would like to hear more from Don Newburg, who was local and might have "interesting information."

The Chair asked for further comments on the subject. Mr. Taylor suggested that there be an effort to update the Town's website with current blasting information. The Board agreed to not put anything on the website until it was known exactly what information to include. Ms. Carrier asked if there would be a way to post a generalized question on the website regarding the community's experience with blasting events. Mr. Taylor said there had been other Town committees that had done that; the answers go to Terri Sawyer, the Town's webmaster.

The Chair recognized Mary Ann Nahf, Bailey Island, who addressed the Board. Ms. Nahf gave anecdotal information of ten years ago, when they had built their house. She said she had tried to find out information; it was difficult to make a decision regarding "pros and cons," and what choices there were. She said that many blasters would do the pre-testing and pre-certification, and were willing to talk to the neighbors. She stated that their blaster did videotaping of the neighbors' foundations, and the Nahfs had offered to pay for water tests, before and after. She said it was "a small cost in relation to the whole project," but she thought it was worth it. Ms. Nahf said an ordinance would be a good thing with regard to the collection of information. She said that direct contact with neighbors was a good idea as well as a legal notice directed to neighbors "some distance away," and done in a timely manner in case they wanted to have their water tested, etc. Ms. Nahf said she had talked to builders she knew and had visited blasting sites; she had with her examples of the notifications, which they did "as part of their normal procedure, if requested" (but they had to do it anyway). She reiterated that more information was needed.

The Town Planner mentioned that she had received a phone call (the third one) from someone who had addressed the Board previously on the issue; the woman stated that, during the blasting in town, it was “irrefutable” that her well was affected by the local blasting. She had been unsure the previous two times. The woman said they promised they would call her and they did not. There was further discussion.

The Chair stated the Board would gather some resources and put together a workshop. Mr. Brooks asked if there was time to get the ordinance ready by Town Meeting; Ms. Tukey said there might still be enough time because they had a good “framework” already. She suggested the Board include the workshop on their next agenda as there was only one jurisdictional matter, so far. She asked for someone to provide her with Don Newburg’s phone number and she would invite him to address the Board. The Board also discussed inviting Brian Skehan, as well as the issue of compensation for any experts. The consensus of the Board was to get information from other sources, as well.

Ms. Levensailor said it was good to have the workshop on the agenda; it would get posted on line, etc. and the public might notice it, if they had an interest in the subject. The Chair asked if there were any further comments; there were none.

TOWN PLANNER’S UPDATES

There were no updates from the Town Planner.

A motion was made to adjourn, which was seconded.

The meeting adjourned at 7:49 PM.

Respectfully Submitted,

Melissa Moretti
Recording Secretary